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Containing the freſheſt Advices Foreign and Domeſtick

From **Saturday**, MAY 5, to **Saturday**, MAY 12, 1733.

The SPEECH *of* John Lloyd, *Eſq; in the Commons Houſe of Aſſembly*, May 3, 1733. *Publiſhed by Order of the Houſe.*

SIR,

YOU have now under your Conſideration, a Speech made in Council by *Robert Wright*, Eſq; our preſent Chief Juſtice, occaſioned by this Hon. Houſe's committing into the Cuſtody of their Meſſenger, *Thomas Cooper*, Eſq; that with others not yet taken, had been running out Lands contrary to Law, and his Excellency the Governor's Warrant, to the Diſquiet of the People, and to create litigious Suits: As alſo by our commiting into the ſame Cuſtody, Meſſ. *Græme*, *Vaughan*, and Others, for breach of Privilege and Contempt of this Houſe.

While the Gentlemen in Cuſtody only complained of their Confinement, and uſed ſuch means as occurred to them, in order to obtain their Liberty; this Houſe well aſſured of the Juſtice of the Commitment, uſed no Means to publiſh to the World, Reaſons to ſupport their Proceedings upon this Occaſion: But, now the Chief Juſtice hath cried aloud, or rather ſounded the Trumpet, with a Deſign, in my humble Opinion, to ſet, not only the good People of *Carolina* againſt Us their Repreſentatives, but to make a Breach between both Houſes, that have (to their eternal Honour) had ſo good a Harmony, to the general Welfare of the Province, as I really believe, is not to be perverted by any one or more deſigning Men. Permit me, Sir, (notwithſtanding what hath been ſaid by Mr. Chief Juſtice, or his Friends, to the contrary) to ſay, that tho' many Writs of *Habeas Corpus* have been granted, both before and ſince the *Habeas Corpus* Act paſſed, 31 *Cha.* 2. in Favour of Perſons committed by the Houſe of Commons, yet no one Inſtance is there, of any Body's being bailed or diſcharged; on the Contrary, the Commons kept the Perſons in their Cuſtody, until a Prorogation or Diſſolution. Witneſs the Caſe of * Dr. *Shirley*, and Sir *John Fagg*, in *Eachard*, upon an Appeal from *Weſtminſter-Hall* to the Houſe of Lords, before the *Habeas Corpus* Act, where Sir *John Robinſon*, Lieutenant of the *Tower*, refuſed to bring four Lawyers before the King in Parliament, upon a *Habeas Corpus*, that were committed into his Cuſtody by the Houſe of Commons, for proſecuting the ſaid Appeal. * Witneſs, alſo, the Caſe of Mr. *Sheridan*, that the Year after the *Habeas Corpus* Act paſſed, was committed without aſſigning his Offence, as Mr. *Eachard* relates, where the Judges of *Weſtminſter-Hall* would not grant a Writ of *Habeas Corpus* in his Favour. † But above all, witneſs that remarkable Caſe of the *Aylsbury* Men and their Lawyers, who in 1704, were committed by the *Engliſh* Houſe of Commons, only for proſecuting their Suits at Law, and who being brought before the Judges of the *King's Bench*, upon a *Habeas Corpus*, inſtead of being bailed or diſcharged, were, by the Opinion of eleven of the twelve Judges of *England*, remanded into Cuſtody, and kept there 'till a Prorogation enſued; and it may not be amiſs to ſay, with how much Regret, and Regard to the Judgment of his Brethren, the Lord Chief Juſtice *Holt* diſſented from them. And, pray, Sir, have we done any more than follow the Example of the Houſe of Commons *England*, by keeping in our Cuſtody thoſe Perſons we had moſt juſtly committed, until they made their Submiſſion? I anſwer no; It is there baſe, in the Chief Juſtice, to traduce us for maintaining the Rights and Privileges of our Houſe, which it is as incumbent on us to do, as it is for him to conform to the Oath of his Office: Since if we failed in this Point, we would be Betrayers of the Right of the People that ſent us hither.

Permit me, Sir, to mention to you with what plauſibility theſe new Advocates for *Liberty* Harangue, to ſupport and juſtify their late Proceedings. What, ſay they, will you, Sir, ſay, the *Habeas Corpus* does not lye againſt a Commitment of the Houſe of Commons; ſays I in anſwer, I think it does not, unleſs you ſhew

* *Vide Eachard's Hiſt. of Engl.* vol. 3. p. 384.

* *Vide Eachard's Hiſt. of Eng.* p. 594.

† *Annals of Q. Anne*, vol. 3.

ſhew an Inſtance of any one, that was ever diſcharged out of Cuſtody, that ſued for and obtained it; And pray, Sir, for Example, ſuppoſe I was committed, by this Hon. Houſe, which God forbid, and ſhould ſend for a Lawyer, and ask him whether it was proper for me to Petition for the *Habeas Corpus*, and he ſhou'd Reply, Sir, you may petition; but, ſays I, Sir, can you produce any Inſtance of the Hearing to favour my Diſcharge; No, Sir, ſays he, the Precedents are all againſt you, and therefore my Advice is, that you ſave yourſelf the Trouble and Charge of a fruitleſs Solicitation. I am ſatisfied, this would be the Advice of a good Lawyer, unleſs he depended on the Ignorance, or Favour of the Judges at the Hearing.

Under this Circumſtance, it was vain, as well as indecent in thoſe Gentlemen, that pop'd Petitions for the *Habeas Corpus*, in ſome of our Members Hands in the publick Streets, and went to others at Taverns, at unſeaſonable times of the Night. Nay, two Gentlemen came to me, on the ſame Occaſion, at a publick Houſe after nine o' Clock at Night, though they well knew my Habitation to be 20 Miles off, and conſequently that I had no Books in Town, where there were ſeveral Inhabitants that were Juſtices of the Peace, that they had not been with on this Occaſion. But this ſhews, Sir, they had laid (tho' vainly) a Scheme to get rich by their Confinement. And now a Bill is like to paſs, *To prevent Vexation and Trouble to thoſe Gentlemen*, that denied the *Habeas Corpus*, becauſe they would do nothing in vain, more than to indemnify them from any Penalties, they, that is, theſe enterprizing Gentlemen, induſtriouſly imply, that had the Commitment been juſt, there would have been no Occaſion for the Act; but the good People we have Honour to Repreſent, have too much penetration to be impoſed upon by this, or any ſuch other mean Artifices.

Upon the whole, Sir, it is my humble Opinion, that the Writ of *Habeas Corpus* was never intended to lie againſt Commitments of either Houſe of Parliament, for the Act implies, the Parties to be either in Goal or Priſon, and I really think, that the Cuſtody of either Houſe is neither; beſides, it ſeems to me, to be calculated againſt ſtate Confinement, leaſt Miniſters of State, and inferiour Magiſtrates, ſhou'd make too free with the Liberties of the People in arbitrary Times, as had been practiſed, previous to the paſſing of that good Act, which I am as fond of as any Man living can be: And any one will be confirmed in this Opinion, that conſiders a Houſe of Commons have no other power, either to keep Order and Decorum among themſelves, or to ſupport them from the Inſults of turbulent Perſons, but by committing and keeping in Cuſtody; and ſhall all inferiour Courts, Sir, have this neceſſary Power in Caſes of Contempt, excluſive of the *Habeas Corpus*, and the Houſe of Commons, which is ſuperior to the higheſt Courts of Law, (as was adjudged by the Judges of the *King's Bench* in the *Aylsbury* Caſe) be denied it. The Act of Parliament that ſettled the Crown on King *William* and Queen *Mary*, of ever bleſſed and immortal Memory, hath put this Matter quite out of Diſpute, By Enacting, *That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or queſtioned in any Court or Place out of Parliament: And that all Officers and Miniſters, whatſoever, ſhall ſerve their Majeſties and their Succeſſors according to the ſame, in all Times to come.* Which, no Doubt, is the Reaſon, that ſince the Determination of the Judges of *England*, on the *Aylsbury* Commitment, which is near 30 Years, that there is no Inſtance of one *Habeas corpus* being granted in Favour of any Body committed by the Houſe of Commons, tho' in that Time there have been a great many committed, among which * Sir *Theodore Janſen*, and Others on account of the *South Sea Project*; and † Dr. *Sacheverel*, for a Sermon by him preached at St. *Paul's*, who had for his Counſel as noted Lawyers as any in *England*, both of the common and civil Law; yet neither of them had the *habeas corpus*. And I ſubmit it to you, Sir, and this Hon. Houſe, whether, as the Act directs a Copy of the Commitment to go with the Petition to the parties ſolicited for the *habeas corpus*, whether granting it is not queſtioning the Commitment of the Houſe of Commons, contrary to the expreſs Meaning of the ſaid Act of *Settlement*, which ſays, *Their Proceedings ſhall not be queſtioned*; and will any Body ſay a Commitment is not a Proceeding.

Now, Sir, it is apparent, that the Houſe of Commons of our Mother Country, ever kept the Cuſtody of ſuch Perſons as they thought fit to commit on any account whatſoever, notwithſtanding the Efforts that were made to the contrary; let us then examine how the Precedents ſtand with us here, and we ſhall find, that tho' ſundry Perſons have been committed by the Commons Houſe of Aſſembly, none of them ever applied, much leſs obtained a *Habeas Corpus*. Nay, Sir, I had the Honour to be a Member of this Houſe in the Year 1722, that there were near 30 Perſons committed into Cuſtody, moſt of them Merchants of as much Note as any in Town; and there was Mr. *Hume* among them, that is known to be as good a Lawyer as any in the Country: And pray, Sir, did they apply for a *Habeas Corpus*? No, Sir, they did not; and the Reaſon is very plain, becauſe they knew it did not lie; but they did, indeed, Petition the then Governor, during their Confinement, to be heard againſt a Bill then depending, which juſtly alarmed the Houſe, and they Reſolved, *That the Confinement of ſuch as are committed by this Houſe,*

* *Vide Political State for* Febr. 1720. † *Vide Appendix to Dr.* Sacheverel's *Tryal in folio.*

House, cannot be releaſed, ſurrendered, or any ways ordered or controul'd by any Power in this Province, but that of this House. This was then, and I believe, is now the Opinion of Mr. *Whitaker*, another Lawyer of Note, who was then a Member, or he wou'd not have lately concealed himſelf, for being concerned in this Land Project, as he did.

And now, Sir, having taken thus much of your Time upon a Subject, however well worth the Conſideration of this Houſe, I ſhall conclude, in moving that we may paſs ſuch *Reſolves*, upon the ſeveral Paragraphs of the Speech, as will juſtify this Houſe from the unjuſt, odious, and malicious Aſperſions and Reflections caſt upon it by the Chief Juſtice.

In the COMMONS HOUSE OF ASSEMBLY, *May*. 10, 1733.

Reſolved,

THAT this Houſe know of no Body that ſpurn'd at his Majeſty's Authority, unleſs the Inſults lately offered to this Houſe (that we think fits by his Majeſty's Authority) by the Chief Juſtice, may be called ſpurning, as we really think it juſtly may.

Reſolved,

That the *Reſolutions* of this Houſe, which the Chief Juſtice falſly, and maliciouſly, ſays, *Tend to the Subverſion of all Government, by diſallowing his Majeſty's undoubted Prerogative*, are on the quite contrary calculated and deſigned to ſupport Government, as well as to preſerve his Majeſty's Prerogative, which this Houſe have been, are, and ever will be as tender of, as of our own Privileges, and thoſe of the good People they have the Honour to Repreſent.

Reſolved,

That it is very ignorant, or malicious, in the Chief Juſtice to ſay, That this Houſe *aſſume to themſelves a Power to abrogate and make void the Laws of the Land*; becauſe they ordered into Cuſtody ſome of their fellow Subjects, for committing notorious Grievances contrary to Law; and others for Breach of Privilege and Contempt of this Houſe, agreeable to the known Practice of the Houſe of Commons in *Great Britain*, and that of this Province.

Reſolved,

That the *Reſolutions* of this Houſe were neceſſarily poſted, or affixed at the Watch-Houſe, where commonly Advertiſements are affixed, and where the Chief Juſtice's Speech and Proteſt were fixed, and not at the Door of the Council-Chamber, as is falſly, and wickedly aſſerted by the ſaid Chief Juſtice in his Speech, with a Deſign to break the happy Agreement and Harmony ſubſiſting between both Houſes, to the general Welfare of the Province.

Reſolved,

That the Order, or Rule lately laid before this Houſe by *Robert Hall*, Eſq; Provoſt Marſhal, ſigned by the Chief Juſtice, directing him the ſaid Marſhal to make a Return (within two Days after the Date of the ſaid Order) of a Writ *ad Reſpondendum*, returnable the ſecond *Teuſday* in *May* following, at the Suit of Dr. *Cooper* againſt *John Brown*, Meſſenger of this Houſe, is contrary to Law, as well as to the Practice and Rules of any Court in this Province.

Reſolved,

That it is the Opinion of this Houſe, that *Robert Wright*, Eſq; the preſent Chief Juſtice, by his ſaid Speech, and other Actings, appears to be unjuſtly Prejudiced againſt the People of *Carolina*, unworthy the Honourable Employment he now bears; and that it would tend to his Majeſty's Service, and the Tranquility of this Province, that he were immediately *ſuſpended*.

By Order of the Houſe,
I. Amyand, *C. D. C.*

CHARLESTOWN, *May* 12.

On the firſt of this Inſtant, *James Oglethorpe*, Eſq; left the Town of *Savanah* in *Georgia*, having put that Place in a Poſture of Defence, ſupplied it with Proviſion, & taken Hoſtages of the *Indians*. In his way from *Port Royal*, he met the *James*, a Ship from *London*, with Ammunition, Stores, and Recruits for *Georgia*: He ſtay'd one Day at *Port Royal*, to give Orders concerning them, and ſet out from thence the Third, at 8 o' Clock in the Morning, and arrived here the Fourth, at two in the Afternoon: His Excellency the Governor and Council met him at the Water ſide, and conducted him to his Excellency's Houſe, where the Speaker, and Houſe of Aſſembly came to Congratulate him on his ſafe Arrival here. He hath brought with him *Tomochichee*, *Mico*, the chief Man of *Yammacraw* (whom they here commonly call King) and two of his Nephews, the eldeſt of them, is adopted Son, to the *Mico*, and called *Toanahowi*; he is a ſprightly Youth, of a very apt Genius, and hath made a good Progreſs in the Engliſh Language, having not only learnt to read the Letters, but Figures alſo.

On Tueſday next *Strawberry* Fair will begin as uſual.

Wedneſday arrived here the Cheifs of the *Upper Cherokees*, (three of which were carried to *England* by Sir *Alex. Cummings*) with their Attendants, to renew their Treaties.

On Thurſday laſt, *James St. John*, Eſq; was diſcharged the Cuſtody of the Meſſenger of the Commons Houſe of Aſſembly.

WHereas Dr. *Edward Orde*, hath lately left off the Buſineſs by him carried on in *Ferry Town*, on *Aſhley* River: Theſe are to deſire all Perſons indebted to the ſaid *Edward Orde*, to pay their reſpective Debts to the ſaid *Edward Orde*, on or before the firſt Day of *July* next, or they they will be ſued, without further Notice, by

Charles Pinckney.

A Lott of Land, in *Charleſtown*, joining to Capt. *Lloyd's* in the *Broad ſtreet*, 28 foot Front, and 180 Deep, to be ſold by Mrs. *Hamerton* near the Church. She alſo ſells the beſt Bohea and Green Tea, as cheap by the Half-pound or Quarter, as the Pound.